

## REMARKS

The Office Action mailed September 12, 2007, rejected Claims 1 and 14 under 35 U.S.C. § 101 because the claimed inventions are allegedly directed to non-statutory subject matter. Claim 3 is rejected under 35 U.S.C. § 112, second paragraph, as lacking antecedent basis. Claims 2-13 and 15-25 are rejected under 35 U.S.C. § 101 because they fail to resolve the deficiencies of Claims 1 and 14.

Claims 1, 3-6, and 16-18 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,697,948, issued to Rabin et al. (hereinafter "Rabin"). The remaining pending claims were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Rabin and one or more other references.

With this response, Claims 1-25 remain pending in the application.

For the reasons set forth below, applicants traverse the rejections and request reconsideration and allowance of the pending claims.

### Description of Claimed Subject Matter

The following description of various aspects of the claimed subject matter is provided to assist the Patent Office in distinguishing the pending claims from the cited references. This description should be viewed as illustrative and should not be viewed as limiting upon the disclosed subject matter or the inventions disclosed therein.

Generally speaking, the claimed subject matter is directed to providing software update information to a client computer. In particular, responsive to a client's request for update information regarding one or more software applications, determinations are made with regard to whether or not a software update exists for the client, and, if so, a tag-based data structure is built and provided to the client/client computer that communicates information, *metadata*, regarding the available software update. Moreover, as the name suggests, the tag-based data structure

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includes tag-based elements including an identifier element and at least one other tag-based element.

Based on the software update metadata in the tag-based data structure, a user can evaluate and determine the value and applicability of the referenced software update. Moreover, information in the tag-based data structure provides information as to what steps are necessary to effectuate the software update on the client computer. Further still, the metadata in the tag-based data structure can be used to actually carry out the software update.

### 35 U.S.C. § 101 Rejections

Claims 1 and 14 were rejected as being directed to non-statutory subject matter. Claims 2-13 and 15-25 were also rejected due to their dependency on Claims 1 and 14. While applicants respectfully disagree with the rejections, applicants have amended independent Claims 1 and 14 to recite the steps of *receiving* a request for update information and, in response: *determining* whether an update is available, *generating* a tag-based data structure, and *providing* the update information in the tag-based data structure to the client computer. The bases for these amendments to Claims 1 and 14 are found in FIGURE 8 and on pages 23, lines 14-24.

Applicants submit that the recited elements, e.g., the generation and provision of useful data in response to a directed request, constitutes useful, concrete, and tangible results suitable to satisfy the requirements of 35 U.S.C. § 101. Accordingly, applicants request that the 35 U.S.C. § 101 rejection be withdrawn.

### 35 U.S.C. § 112, Second Paragraph, Rejections

Claim 3 was rejected under 35 U.S.C. § 112, second paragraph, as lacking antecedent basis for the recitation "above-described order." Applicants have amended Claim 3 to explicitly recite the order of tag-based elements in a tag-based structure as recited in Claim 1. Applicants

submit that the amendment fully addresses and resolves the 35 U.S.C. § 112, second paragraph, rejection. Accordingly, applicants request that the 35 U.S.C. § 112, second paragraph, rejection be withdrawn.

### 35 U.S.C. § 102(e) Rejections

#### Claim 1

Applicants respectfully traverse the 35 U.S.C. § 102(e) rejection of Claim 1 as being anticipated by Rabin, and submit that Rabin fails to disclose each element of Claim 1. Claim 1 reads as follows:

1. A method for communicating update metadata corresponding to a software update to a client computer, the method comprising:

*receiving a synchronization request from a client computer* for information regarding a software update corresponding to a software product; and

responsive to the synchronization request:

*determining whether a software update is available* for the software product;

*generating a tag-based data structure* storing metadata corresponding to a software update available for installation on the client computer, the tag-based data structure comprising:

a tag-based identifier element storing metadata that uniquely identifies the software update; and

at least one additional element of the following tag-based elements:

a property element storing metadata identifying general properties relating to the software update including update handler information identifying an update handler for installing the identified software update on the client computer;

a localized property element storing metadata identifying language specific information directed to a computer user relating to the software update;

a relationship element storing metadata identifying relationships the software update has to other software updates;

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a rule element storing rules for determining the applicability of the software update to a client computer;

a file element storing metadata identifying the identified software update's payload and information relating to the software update's payload; and

a handler element storing metadata identifying information for executing the update handler identified in the property elements for installing the identified software update on the client computer; and

***providing the tag-based data structure to the client computer.***

Rabin is directed to providing a mechanism to prevent unlicensed/unauthorized use of software, i.e., to protect against various forms of software piracy. As part of the Rabin system, a vendor generates a value, referred to as a "tag," that uniquely corresponds to an instance of installed software. See, Rabin, Col. 3, lines 50-52. This tag is used by a supervisor program (as well as an external guardian center) to ensure that the software instance is used in an authorized manner on an authorized computer.

Applicants submit that Rabin fails to disclose "***receiving a synchronization request from a client computer for information regarding a software update corresponding to a software product,***" as recited in Claim 1. Indeed, applicants have carefully reviewed Rabin and submit that nothing in Rabin describes obtaining information/metadata regarding a software update, and Rabin particularly fails to disclose receiving a request "from a client computer for information regarding a software update corresponding to a software product."

Applicants further submit that Rabin fails to disclose "***determining whether a software update is available for the software product,***" as recited in Claim 1. Indeed, while Rabin is directed to ensuring that software is used in an authorized manner, Rabin is not directed to obtaining a software update and, therefore, fails to disclose "determining whether a software update is available for the software product."

Applicants still further submit that Rabin fails to disclose "***generating a tag-based data structure storing metadata corresponding to a software update available for installation on the client computer,***" as recited in Claim 1. Applicants note that Rabin uses the term "tag," but the use of this term is merely evidence of overloading a particular term, as Rabin's use of "tag" is entirely distinct from the "tag-based data structure" and "tag-based elements" that are recited in Claim 1. Indeed, Rabin uses the term "tag" to reference a hash value (or fingerprint) that uniquely corresponds to a software instance or supervisor program on a particular client computer. See, Col. 3, line 66–Col. 4, line 9. Hence, while on a entirely meaningless level, Rabin discloses generating a "tag" and is therefore "tag-based," Rabin fails to disclose a data structure, and, more particularly, Rabin fails to disclose "generating a tag-based data structure storing metadata corresponding to a software update available for installation on the client computer."

Applicants further note that the tag-based data structure includes a "tag-based identifier element storing metadata that uniquely identifies the software update," as well as at least one additional tag-based element of: a property element, a localized property element, a relationship element, a rule element, a file element, and a handler element, each of which stores metadata corresponding to an aspect of a software update. The Office Action has pointed to various locations throughout Rabin that purportedly disclose these elements. In traversing these assertions, applicants first note the cited passages from Rabin are not related to a software update and are not stored in a tag-based data structure. Considering that Rabin's tag identifies a particular instance of software (even though it is NOT in a tag-based data structure and does NOT relate to a software update), applicants further note the following:

- A property element: The Office Action refers to Col. 3, lines 50-55, as disclosing a property element as recited in Claim 1. This passage relates to a supervising

program that executes on the user's computer, not to a record/element in a tag-based data structure that stores metadata identifying general properties of a software update. In short, Rabin fails to anticipate a property element since (a) it is not in a tag-based data structure with an identifier element, and (b) it fails to disclose (or even relate to) metadata regarding a software update.

- A localized property element: The Office Action refers to Col. 16, lines 34-39, as disclosing a localized property element as recited in Claim 1. This passage is directed to incorporating a device test with a software application, i.e., a machine-executable "if statement" that tests whether the software is executed on an authorized device. Clearly, this fails to anticipate a localized property element since (a) it is not in a tag-based data structure with an identifier element, (b) it does not relate to language specific information "directed to a computer user," (c) it is not metadata regarding a software update.
- A relationship element: The Office Action fails to describe where a relationship element is found in Rabin. However, Office Action is correct that it only needs to find one of the additional elements (in addition to the identifier element). As the Office Action has failed to point out a basis of a relationship element in Rabin, it is assumed that one is not found in Rabin.
- A rule element: The Office Action refers to Col. 5, lines 10-25; Col. 29, lines 29-35; and Col. 19, lines 49-56, as disclosing a rule element. None of these passages relates to a rule element that stores metadata identifying rules for determining the applicability of the software update to the client computer. Indeed, the passage of Col. 5 describes a guardian center that sends communications to the user computer that include actions to be followed with

regard to valid use of an installed instance of software. However, while rules and actions to be followed may be viewed as similar, the actions (a) are not actions to determine the applicability of a software update to the client computer, and (b) are not part of a tag-based data structure that includes an identifier element (which the Office Action identified as the tag). The passage of Col. 29 relates to policies and rules with respect to the protection of intellectual property. Nothing in this passage (a) suggests rules to determine the applicability of a software update to the client computer, and (b) is described as part of a tag-based data structure that includes an identifier element. The passages of Col. 19 are illustrative of the policies that the guardian center may send to the supervising program on the user device. They include instructions to allow or disallow use of the software and disable the user device. They (a) are not rules to determine the applicability of a software update to the client computer and (b) are not described as part of a tag-based data structure that includes an identifier element. In sum, Rabin fails to disclose a tag-based rules element as recited in Claim 1.

- A file element: Regarding a file element that identifies the software update's payload, the Office Action cited to Col. 2, lines 55-60; Col. 13, line 60–Col. 14, line 5; and Col. 18, lines 55-60. The passage in Col. 2 states that Rabin enables software vendors to charge on a pay-per-use basis. It is entirely unreasonable to construe enabling pay-per-use as equivalent to metadata that identifies a software update payload. Moreover, nothing in Rabin suggests enabling software vendors to charge on a pay-per-use basis is found in a tag-based element of a tag-based data structure. The passage of Col. 13 describes associating a tag with a status in a tag database. While this actually illustrates some data structure, applicants note

that this passage fails to disclose the usage status in a tag-based element of a tag-based data structure as recited in Claim 1 and further fails to disclose that it is related to the payload of a software update. The passage of Col. 18 describes the pay-per-use feature of Rabin. Applicants note that this passage fails to identify a tag-based element in a tag-based data structure, and is not related to a software update.

- A handler element: The Office Action fails to describe where a handler element (as recited in Claim 1) is found in Rabin. As the Office Action has failed to point out a basis of a handler element in Rabin, it is assumed that one is not found in Rabin.

As can be seen from the above, Rabin fails to disclose a tag-based data structure that includes tag-based elements regarding a software update including an identifier element and at least one of a property element, localized property element, a relationship element, a rule element, a file element, and a handler element.

In view of the above, applicants submit that Rabin clearly fails to disclose each and every element of Claim 1. Accordingly, applicants request that the 35 U.S.C. § 102(e) rejection of Claim 1 be withdrawn and the claim allowed.

#### Claim 14

Claim 14 was rejected for the same reasons as set forth above in regard to Claim 1. For the reasons set forth above, applicants submit that Claim 14 is in condition for allowance.

Claim 14 further includes elements that distinguish it from Rabin. In particular, Claim 14 reads as follows:

14. A method for communicating update metadata corresponding to a software update to a client computer, comprising:

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receiving a synchronization request from a client computer for information regarding a software update corresponding to a software product; and responsive to the synchronization request:

- determining whether a software update is available for the software product;
- generating a tag-based data structure storing metadata corresponding to a software update available for installation on the client computer, *wherein the tag-based elements are text-based elements*, the tag-based data structure comprising:

- an identifier element that uniquely identifies the software update; and

- at least one additional element of the following elements:

- a property element storing general properties relating the software update including update handler information identifying an update handler for installing the identified software update on the client computer;

- a relationship element storing relationships the software update has to other software updates;

- a file element identifying the identified software update's payload and information describing information relating to the software update's payload; and

- a handler element storing information for executing the update handler identified in the property elements for installing the identified software update on the client computer; and

- providing the tag-based data structure to the client computer.

Applicants point out that Claim 14 further recites that the tag-based elements in the tag-based data structure are text based. Support for this amendment is found, *inter alia*, in FIGURE 9.

Nothing in Rabin discloses textual, tag-based elements in a tag-based data structure that stores metadata corresponding to a software update. Accordingly, in addition to the reasons set forth above in regard to Claim 1, applicants submit that Claim 14 is in condition for allowance, and request that the 35 U.S.C. § 102(e) rejection of Claim 14 be withdrawn and the claim allowed.

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### Claim 3

Claim 3 has been amended to recite that the tag-based elements of the tag-based data structure are ordered in a specific order. Rabin fails to disclose tag-based elements in a tag-based data structure relating to a software update, and further fails to disclose placing them in a particular order. Hence, applicants submit that Claim 3 is in condition for allowance and request that the 35 U.S.C. § 102(e) rejection of Claim 14 be withdrawn and the claim allowed.

### Claims 4-6 and 16-18

Claims 4-6 and 16-18 depend from independent Claims 1 and 14, respectively. As Claims 1 and 14 are in condition for allowance, applicants submit that Claims 4-6 and 16-18 are also in condition for allowance.

### 35 U.S.C § 103(a) Rejections

#### Claims 2 and 15

Claims 2 and 15 were rejected as being unpatentable in view of Rabin and U.S. Publication No. 2003/0204481 to Lau (hereinafter "Lau"). Lau was relied upon as disclosing an XML based data structure. Irrespective of whether or not Lau discloses an XML based data structure, Lau fails to amend the deficiencies of Rabin with regard to Claims 1 and 14 (except, perhaps, with regard to the text-based elements of Claim 14). Accordingly, applicants submit that Claims 2 and 15 are in condition for allowance, and request that the 35 U.S.C. § 103(a) rejections be withdrawn and the claims allowed.

#### Claims 7-8, 10, 19-20, and 22

Claims 7-8, 10, 19-20, and 22 were rejected as being unpatentable in view of Rabin and U.S. Patent No. 2003/0018964 to Fox et al. (hereinafter "Fox"). Fox was relied upon as disclosing the joinder of elements using Boolean operators, and further as disclosing the use of

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prerequisites. Irrespective of whether or not Fox discloses these items, Fox fails to amend the deficiencies of Rabin with regard to Claims 1 and 14. Accordingly, applicants submit that Claims 7-8, 10, 19-20, and 22 are in condition for allowance, and request that the 35 U.S.C. § 103(a) rejections be withdrawn and the claims allowed.

#### Claims 9 and 21

Claims 9 and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Rabin and U.S. Publication No. 2004/0015939 to Cheah (hereinafter "Cheah"). Cheah was relied upon as disclosing supersedence. Irrespective of whether or not Cheah discloses supersedence in regard to software updates, Cheah fails to amend the deficiencies of Rabin with regard to Claims 1 and 14. Accordingly, applicants submit that Claims 9 and 21 are in condition for allowance, and request that the 35 U.S.C. § 103(a) rejections be withdrawn and the claims allowed.

#### Claims 11-13 and 23-25

Claims 11-13 and 23-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Rabin and U.S. Publication No. 2002/0100036 to Moshir (hereinafter "Moshir"). Moshir was relied upon as disclosing patching a software application and replacing files of a software application. Irrespective of whether or not Moshir discloses supersedence in regard to software updates, Cheah fails to amend the deficiencies of Rabin with regard to Claims 1 and 14. Accordingly, applicants submit that Claims 11-13 and 23-25 are in condition for allowance, and request that the 35 U.S.C. § 103(a) rejections be withdrawn and the claims allowed.

### CONCLUSION

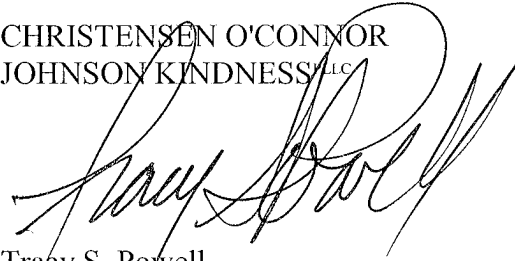
In view of the foregoing amendments and remarks, applicants submit that Claims 1-25 are in condition for allowance over the cited and applied references, and respectfully request

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reconsideration and allowance of the same. The Examiner is invited to contact applicants' attorney at the number provided below to resolve any issues that may arise in order to advance prosecution of this application.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Tracy S. Powell", is written over the printed name and firm name.

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